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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,058

09/09/2004

Salvatore Calabrese

3006051-0005-PCT-US

8460

22469

7590

06/28/2007

SCHNADER HARRISON SEGAL & LEWIS, LLP

1600 MARKET STREET

SUITE 3600

PHILADELPHIA, PA 19103

EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/507,058	CALABRESE, SALVATORE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Brown	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-6-06</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-11 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese '226 in view of McFarlane, along with Lerman '597.

Calabrese '226 discloses in figures 1-4 a cervical collar, substantially as claimed. However, Calabrese doesn't disclose the support member being a lateral support member or the support member being positioned substantially parallel to the wear's jawbone. McFarlane teaches in figures 1-6 a cervical collar comprising a lateral support member 28, disposed under the neck region below the mandible bone. However, neither reference discloses or teaches the lateral member being positioned substantially parallel to the wear's jaw. Lerman '597 teaches in figures 4-5 a cervical collar comprising a lateral support member 94, that is positioned substantially parallel to a wearer's jaw. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the lateral support as taught by McFarlane could be incorporated into the cervical collar disclosed by Calabrese in order to provide support to the neck of the user. The lateral support as taught by McFarlane could be

positioned substantially parallel to the wearer's jaw as taught by Lerman to allow the lateral support to conform to the anatomical shape of the neck while fitting close to the neck to stabilize the jawbone and the neck.

Claims 2-6, 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Monfardin '027.

Calabrese discloses in figures 1-4 a cervical collar substantially as claimed. McFarlane teaches a cervical collar having a lateral support and a plurality of supports 28. Lerman teaches in figures 4-5 a cervical collar having a lateral support being positioned substantially parallel to the wearers' jawbone. However, Calabrese, McFarlane or Lerman discloses the support member being rectangular, substantially flat and having rounded corners. Monfardini teaches in figures 1-3 a support member 20 that is rectangular, substantially flat and has rounded corner (fig. 2). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the support member disclosed by Calabrese and taught by McFarlane and Lerman could be constructed to have the same shape as the support member as taught by Monfardini. The reason for making the substitution is both supports are functionally equivalent (used to provide support around the user's neck) and used in the same field of endeavor (cervical collars). The supports could be a plurality of supports as taught by McFarlane in order to provide support around the user's neck. The lateral support could be on both sides of the collar as taught by Lerman in figure 4.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese '226 in view of McFarlane, along with Lerman.

Calabrese '226 discloses a cervical collar, substantially as claimed. McFarlane teaches a cervical collar with lateral supports. Lerman teaches in figures 4-5 a cervical collar having a lateral support being positioned substantially parallel to the wearers' jawbone. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that turning a patient's neck from side to side to strengthen neck muscles is old and well know. It doesn't involve an inventive step or novelty to test a lateral support to see if additional lateral supports are needed to support a user's neck. A large individual such as a professional wrestler or football player would require additional support versus a small woman or child wearing the cervical collar would require less support members.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
June 23, 2007

A handwritten signature in black ink, appearing to read 'M. Brown', with a stylized flourish extending to the right.

MICHAEL A. BROWN  
PRIMARY EXAMINER